

SENATE BILL 1644

By Niceley

AN ACT relative to the levy of a privilege tax on the  
occupancy of accommodations furnished to transients in  
Grainger County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act:

(1) "Clerk" means the county clerk of Grainger County, Tennessee, or such other officer as the county legislative body may direct;

(2) "Consideration" means the consideration charged, whether or not received for the occupancy in a hotel valued in money whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and services of any kind or nature without any deduction therefrom whatsoever. This definition does not imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person;

(3) "County" means Grainger County, Tennessee;

(4) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, campground, motel or any place in which rooms, lodging, or accommodations are furnished to transients for a consideration;

(5) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings, or accommodations in any hotel;

(6) "Operator" means the person operating the hotel whether as owner, lessee, or otherwise, and includes governmental entities;

(7) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver trustee, syndicate, governmental unit other than the United States or any of its agencies, or any other group or combination acting as a unit; and

(8) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodging, spaces, or accommodations in a hotel for a period of less than thirty (30) continuous days.

SECTION 2. The legislative body of Grainger County is authorized to levy a privilege tax upon the privilege of occupancy in a hotel of each transient, in the amount not to exceed five percent (5%) of the rate charged by the operator. The tax imposed is a privilege tax upon the transient occupying such room or other accommodation and is to be collected and distributed as provided in this act. The rate of the tax may be modified by the county legislative body up to the percentage limitation stated in this section. Such tax is in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied; provided, that, pursuant to Tennessee Code Annotated, Section 67-4-1425, Grainger County is prohibited from levying the tax within a municipality that has levied an occupancy tax prior to the effective date of this act.

### SECTION 3.

(a) Each operator shall add the occupancy tax to each invoice prepared by the operator for the occupancy of the hotel. The invoice must be given directly or transmitted to the transient, a copy thereof to be retained and filed by the operator as provided in Section 8.

(b) When a person has maintained occupancy for thirty (30) continuous days, that person is entitled to receive from the operator a refund or credit for the tax previously collected or charged, and the operator is entitled to receive credit for the amount of such tax if previously paid or reported to the county.

SECTION 4. An operator of a hotel shall not advertise or state in any manner, whether directly or indirectly that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 5.

(a) Each operator who leases, rents, or charges for rooms or space in hotels within the county shall remit the tax collected by the operator to the clerk not later than the twentieth day of each month for the preceding month. The operator shall collect the tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to, during, or after occupancy, as may be the custom of the operator. If credit is granted by the operator to the transient, then the obligation to the county entitled to such tax is that of the operator.

(b) For the purpose of compensating the county clerk for collecting the tax, the clerk may retain five percent (5%) of the amount of the tax remitted by the operator.

(c) The clerk shall faithfully account for, make proper reports of, and pay over to the trustee of the county at monthly intervals, all funds paid to, and received by, such clerk for the privilege tax authorized by this act.

SECTION 6.

(a) The clerk shall collect the tax and place the proceeds of the tax in accounts as designated in Section 10 for the purposes stated therein. Each operator shall file with the clerk a monthly tax return under oath with such number of copies thereof as the clerk may reasonably require for the collection of such tax. The report of the operator must include such facts, and information as may be deemed reasonable for the verification of the tax due. The clerk shall develop the form of such report, and the form must be approved by the county legislative body prior to use. The clerk shall audit each operator in the county at least once per year and shall report on the audits on a quarterly basis to the county legislative body.

(b) The county legislative body may adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this act, including the form for such reports.

#### SECTION 7.

(a) Taxes collected by an operator that are not remitted to the clerk on or before the due dates are delinquent. An operator is liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and is liable for an additional penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. The interest and penalties become a part of the tax herein required to be remitted.

(b) Each occurrence of knowing refusal of an operator to collect or remit the tax or knowing refusal of a transient to pay the tax imposed is a separate violation of this act and may result in the imposition of a civil penalty, to be imposed separately for each violation, not to exceed fifty dollars (\$50.00) upon a finding of such knowing refusal by a court of competent jurisdiction. As used in this section, "each occurrence" means each day.

(c) This section does not prevent the clerk or other authorized collector of the tax from pursuing any civil remedy available to the collector by law, including issuing a distress warrant and the seizure of assets, to collect any taxes due or delinquent under this act.

SECTION 8. Each operator liable for the collection and payment to the county of any tax levied pursuant to this act shall keep and preserve for a period of three (3) years all records necessary to determine the amount of such tax. The clerk may inspect the records of each operator at all reasonable times.

#### SECTION 9.

(a) In administering and enforcing the provisions of this act, the clerk has as additional powers the powers and duties with respect to collecting taxes as provided in Tennessee Code Annotated, Title 67, or otherwise provided by law for county clerks.

(b) Upon any claim of illegal assessment and collection, the taxpayer has the remedies provided in Tennessee Code Annotated, Title 67, it being the intent of this act that the provisions of law that apply to the recovery of state taxes illegally assessed and collected also apply to the tax levied pursuant to this act. Tennessee Code Annotated, Section 67-1-707, is applicable to adjustments and refunds of such tax. With respect to the adjustment and settlement with taxpayers, all errors of county taxes collected by the clerk under the authority of this act must be refunded by the clerk.

(c) Notice of any tax paid under protest must be given to the clerk, and the resolution authorizing levy of the tax must designate a county officer against whom suit may be brought for recovery.

SECTION 10. The proceeds of the tax authorized by this act must be deposited in the general fund held solely for expenditures therefrom as may be adopted by county legislative body.

SECTION 11. The tax levied pursuant to this act shall only apply in accordance with the provisions of Tennessee Code Annotated, Section 67-4-1425.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision's application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of Grainger County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified to the secretary of state.

SECTION 14. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 13.